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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

N.S. by and through
his parents, J.S. and R.S.,
Plaintiffs

Case No. 05-0177CV
Complaint and Fees Petition

v.

Anchorage School District,
Defendants

Introduction

1. This is a complaint and fees petition by a student with disabilities pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., ("IDEA") following successful exhaustion of administrative remedies under that act.

Jurisdiction

2. This Court has jurisdiction pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1415, and specifically §1415(i)(3)(A), and §1391.

Venue

3. Venue is proper within the Court pursuant to L.R. 3.3.

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Parties

4. N.S. is a minor child with disabilities entitled to all of the procedural rights and protections of the IDEA. J.S. and R.S. are the parents of N.S.
5. Anchorage School District is the local educational agency pursuant to the IDEA responsible to ensure that N.S. is provided a free appropriate public education pursuant to the IDEA.

FACTS

6. J.S. and R.S. filed two complaints with the Department of Education and Early Development ("DEED") alleging that ASD was violating N.S.'s rights pursuant to the IDEA. These administrative complaints are known as Complaint No. 04-04 and Complaint No. 04-14. Ex. A, and Ex. B attached to this complaint.
7. In Complaint No. 04-04, J.S. and N.S. alleged that ASD had failed to provide certain educational services to N.S. DEED ruled in favor of N.S. and issued a Corrective Action Order on December 5, 2003 finding violations of 34 C.F.R. 300.13 and 34 CFR 300.342(a). Ex. A. The Corrective Action ordered ASD to provide N.S. with "compensatory" special education and related services, to determine how those services would be delivered in cooperation with J.S. and R.S. and to report back to DEED by January 16, 2004.
8. In Complaint No. 04-14, J.S. and N.S. alleged that ASD failed to provide transportation services to N.S. consistent with his unique needs and as required by the IDEA. DEED ruled once again in favor of N.S. and issued a Corrective Action Order on July 16, 2004. DEED determined ASD had violated 34 CFR

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300.342(a). **Ex. B.** The Corrective Action ordered ASD to schedule a meeting to arrange for appropriate transportation for N.S.

9. Following the issuance of the Corrective Action orders, J.S. and R.S. contacted the ASD on numerous occasions to ensure compliance with the Corrective Action Orders.
10. When ASD continued to fail to comply with the Corrective Action orders, J.S. contacted DEED seeking assistance. DEED advised J.S. to request a special education due process hearing pursuant to the IDEA and state law to enforce the two Corrective Action orders.
11. The Disability Law Center assumed representation following J.S.'s inability to enforce DEED Complaint No. 04-04 and 04-14 by self-advocacy and through contacting DEED.
12. On September 30, 2004, on behalf of J.S. and N.S., DLC filed a request for a special education due process hearing concerning N.S.
13. Following preliminary matters, a special education due process hearing was held on December 13, 2004 before Independent Hearing Officer, Linda M. Cerro. This is known as DEED Hearing No. 05-12. Following one efficient day of hearing, testimony of both parties, receipt of documentary evidence and post-hearing briefing, on February 9, 2005, IHO Cerro ruled substantially in favor of N.S. and his parents. **Ex. C.** IHO Cerro found that ASD had failed to fully comply with the Corrective Action orders and awarded N.S. additional remedies as a result.

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14. IHO Cerro retained jurisdiction to ensure transportation arrangements were complete. When ASD failed to respond to her order to provide certain documentation about transportation services, on February 25, 2005, the IHO, by an additional order directed ASD to provide N.S. yet an additional remedy. Ex. D.
15. ASD did not appeal DEED No. 05-12, either the decision or the amended decision of IHO Cerro.
16. ASD has violated the IDEA and the rights of N.S., N.S. substantially prevailed before the IHO, and therefore is responsible for DLC's attorneys' fees. 20 U.S.C. §1415(G).
17. DLC's attorney fees in this matter are \$12,024.90. A statement of fees and costs is attached. Ex.E. The total number of hours expended on this case is just 57 hours. DLC did not request payment for the time of its paralegal, courier costs, copying or postage costs.
18. On March 22, 2005, DLC requested that ASD pay attorneys fees and costs DLC had incurred in this case in the amount of \$12,024.90. Ex. F. DLC explained its non-profit status and right to fees in summary fashion.
19. On March 31, 2005, ASD responded that it would offer partial payment of the fees. Ex. G.
20. On April 1, 2005, DLC again requested that ASD pay the full attorneys' fees and costs DLC had incurred in this case in the amount of \$12, 024.90. Ex. H. After comprehensively explaining its right to the modest attorneys' fees

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requested in this case, DLC asked ASD to identify any specific case law supporting its theory that the full amount should not be paid.

21. April 15, 2005, ASD responded to the DLC letter of April 1, 2005 again declining to pay the full amount of the fees. Ex. I

22. ASD has agreed to accept service of this complaint and fees.

23. Counsel for this case has substantial experience in special education cases of this nature and as a result, this case was efficiently and favorably resolved. Counsel's fee of \$225.00 per hour is reasonable and does not exceed the hourly rate prevailing in the Anchorage or Alaska community for similar services by attorneys of reasonably comparable skill, reputation and experience. The total number of hours spent, 57 hours, is reasonable. Counsel Sonja D. Kerr has nearly 17 years of experience in special education law, has litigated numerous due process hearings on behalf of parents and is widely considered an expert in special education law throughout not only Alaska but the United States. Counsel Kerr's affidavit affirming this experience as well as the underlying administrative and billing records documents is attached.

25. Counsel requested ASD to provide information as to the amount of time and attorneys' fees incurred by ASD in this same case for comparison purposes. ASD has not responded to that request. Ex. G.

26. Counsel made substantial efforts to resolve the issue of attorneys' fees without the necessity of filing this complaint and fees petition but without success. Ex.

E-I.

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27. The research and drafting of this complaint has been efficient and counsel herein requests two additional hours (\$450.00) for this work, and reimbursement of the filing fee paid in this matter, in addition to any reasonable attorneys' fees and costs necessary to litigate this matter.

CLAIM FOR RELIEF

WHEREFORE, pursuant to this Court's authority and jurisdiction under §20 U.S.C. §1415, and specifically §1415(i)(3), DLC hereby requests that the Court:

1. The fees and costs incurred by DLC to protect the federal educational rights of N.S., in the amount of \$12,024.90.
2. Attorney fees for the drafting of this complaint, and reasonable attorneys' fees and costs in the pursuit of this action.

Dated: July 27, 2005

Sonja D. Kerr
Sonja D. Kerr, 0409051
Disability Law Center

Certificate of Service

I hereby certify that on the 27th day of July 2005, a true and correct copy of this document was served by Courier on:

Bradley Owens
Jermain Dunnagan & Owens, PC
3000 A Street, Suite 300
Anchorage, AK 99503

Patti Freeman
Patti Freeman

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